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SEALED

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

11 United States of America ex rel. Sidesolve
12 LLC,

13 Plaintiff-Relator,

14 v.

15 Fitness Alliance, LLC; Fitness Alliance
16 NV; EOS Fitness Utah LLC; Sports Arena
17 Fitness, LLC; and EOS Fitness Opco
18 Holdings, LLC,

19 Defendants.

Case No.


CV22-01126-PHX-MTL

COMPLAINT

(Jury Trial Requested)

23 RESPECTFULLY SUBMITTED this 29th day of June 2022:

24 **Bracker & Marcus LLC**

25 By: 
26 Jason Marcus
27 Attorney for Sidesolve LLC
28

COMPLAINT

1
2 1. Relator Sidesolve LLC brings this action on behalf of itself and the United States
3 of America against Defendants Fitness Alliance, LLC; Fitness Alliance NV; EOS
4 Fitness Utah LLC; Sports Arena Fitness, LLC; and EOS Fitness Opco Holdings,
5 LLC, for violations of the federal False Claims Act, 31 U.S.C. §§ 3729 *et seq.*
6

7
8 2. This action seeks to recover funds that were loaned to Defendants through the
9 federal Government's Paycheck Protection Program ("PPP") and forgiven as a result
10 of false applications.
11

12 3. Sidesolve LLC is a company that uses data to investigate large-scale corporate
13 fraud. Its goal is to use the technology it is developing to protect individuals on
14 private healthcare plans. It is currently developing its technology using public
15 databases. It uses computational statistics to match entities across multiple resources
16 such as databases, social media, corporate filings, and other sources. From this
17 broader picture, it finds fraud leads, which it follows up with a more traditional
18 manual investigation. In sum, Sidesolve LLC uses its expertise and proprietary
19 technology to both collect the scattered pieces of the fraud puzzle and also to put
20 them together into a complete picture of the alleged fraud.
21

22
23 4. While using its technology to search for potential PPP loan fraud in data released
24 by the SBA, Relator Sidesolve LLC came across Fitness Alliance, LLC, which had
25 applied for two or three PPP loans in three different amounts—all reporting 500
26 employees—on the same day.
27
28

1 5. As Sidesolve LLC delved deeper, it discovered what it believes to be a blatant
2 violation of the PPP's rules, whereby EOS Fitness Opco Holdings, LLC and some of
3 its subsidiaries applied for and received PPP loans totalling \$8,085,888, all of which
4 was forgiven by the federal Government.
5

6 6. Had these entities properly applied the SBA's Affiliation Rules—the purpose of
7 which is to prevent exactly this sort of “unbundling” of companies to circumvent
8 SBA requirements—then, upon information and belief, most of these entities would
9 not have been eligible to receive the loans or have received forgiveness for the loans.
10

11 7. Because their loans were forgiven, EOS Fitness and its subsidiaries received a
12 windfall of approximately \$7,462,803, plus interest, to the detriment of the federal
13 government and the thousands of small businesses that were unable to get the
14 financial assistance they badly needed during the pandemic.
15

16 **JURISDICTION AND VENUE**

17
18 8. This Court has jurisdiction over this action pursuant to 31 U.S.C. § 3732(a) and
19 28 U.S.C. §§ 1331, 1345.
20

21 9. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 31 U.S.C. §
22 3732(a), as Defendants transact business in this jurisdiction and violations of the
23 False Claims Act described herein occurred in this district.
24

25 **THE PAYCHECK PROTECTION PROGRAM**

26 10. During the COVID-19 pandemic, Congress passed the Coronavirus Aid, Relief,
27 and Economic Security Act (“CARES Act”). Section 1102 of the CARES Act
28

1 contains a program called the Paycheck Protection Program ("PPP"), a program
2 administered by the U.S. Small Business Administration ("SBA") to provide
3 economic relief to small businesses nationwide adversely impacted by the
4 coronavirus pandemic.
5

6 11. Section 1102 of the CARES Act temporarily permitted SBA to guarantee 100%
7 of the PPP loans. Section 1106 of the CARES Act provided for forgiveness of up to
8 the full principal amount of qualifying loans guaranteed under the PPP.
9

10 12. The CARES Act gives lenders delegated authority to process loan applications
11 for PPP funding. SBA allowed lenders to rely on certifications of the borrowers in
12 order to determine eligibility of the borrower and use of loan proceeds, and to rely on
13 specified documents provided by the borrower to determine qualifying loan amount,
14 and eligibility for loan forgiveness.
15

16 13. Lenders were compensated by the federal government via processing fees based
17 on the balance of the financing outstanding at the time of final disbursement, in the
18 following amounts:
19

- 20
- 21 • Five (5) percent for loans of not more than \$350,000;
 - 22 • Three (3) percent for loans of more than \$350,000 and less than
23 \$2,000,000; and
 - 24 • One (1) percent for loans of at least \$2,000,000.

25 14. Borrowers had to submit documentation necessary to establish eligibility such as
26 payroll processor records, payroll tax filings, form 1099s, income and expenses
27 documentation.
28

1 15. In general, the maximum amount borrowers could borrow was calculated by
2 aggregating payroll costs from the previous year, with annual employee salaries
3 capped at \$100,000. The borrower then calculated the average monthly payroll cost
4 and multiplied that amount by a factor of 2.5.

5
6 16. Each borrower certified on its PPP application that “[d]uring the period beginning
7 on February 15, 2020 and ending on December 31, 2020, the Applicant has not and
8 will not receive another loan under the Paycheck Protection Program.”

9
10 17. Borrowers “further certify that the information provided in this application and
11 the information provided in all supporting documents and forms is true and accurate
12 in all material respects.”

13
14 18. Borrowers were then able to seek forgiveness of the loans if the funds were used
15 for eligible payroll costs, payments on business mortgage interest payments, rent, or
16 utilities during either the 8- or 24-week period after disbursement.

17
18 **PARTIES**

19 19. Sidesolve LLC is a company that uses data to investigate scaled corporate fraud.

20 20. EOS Fitness Opco Holdings, LLC is the parent company of various subsidiaries
21 that operate a chain of fitness centers under the name EOS Fitness. These
22 subsidiaries include, but are not limited to, Fitness Alliance, LLC; EOS Fitness Utah
23 LLC; and Sports Arena Fitness, LLC. EOS Fitness Opco Holdings, LLC’s principal
24 address is 126 E 56th St., New York, NY 10022.

25 21. Fitness Alliance, LLC is headquartered at 1 E Washington St., Ste. 500, Phoenix,
26
27
28

1 AZ 85004.

2 22. Upon information and belief, there is no legal entity called Fitness Alliance NV,
3 but rather it is a business name used to obtain a PPP loan for Fitness Alliance, LLC.
4

5 23. Sports Arena Fitness, LLC's managing member is Fitness Alliance, LLC. Upon
6 information and belief, this entity consists of certain Gold's Gym facilities purchased
7 by Fitness Alliance, LLC.
8

9 24. EOS Fitness Utah LLC's managing member is EOS Fitness Opco Holdings, LLC.
10 Its principal address is 2261 Kiesel Ave., Ste 200, Ogden, UT 84401.
11

12 25. EOS Fitness Opco Holdings, LLC; Fitness Alliance, LLC; EOS Fitness Utah
13 LLC; Fitness Alliance NV (insofar as it exists); and Sports Arena Fitness, LLC shall
14 hereinafter be referred to collectively as "EOS Fitness."
15

16 26. The subsidiaries of EOS Fitness excluding EOS Fitness Opco Holdings, LLC—
17 i.e., Fitness Alliance, LLC; EOS Fitness Utah LLC; Fitness Alliance NV (insofar as
18 it exists); and Sports Arena Fitness, LLC—shall hereinafter be collectively referred
19 to as "the EOS Fitness Entities."
20

21 **FACTUAL ALLEGATIONS**

22 27. On April 28, 2020, TCF National Bank—now a part of Huntington Bank—
23 approved six separate PPP loans for EOS Fitness, each of which was subsequently
24 forgiven.
25

26 28. Fitness Alliance, LLC was approved for a loan of \$3,478,411. It reported 500
27 jobs. On June 11, 2021, the loan was forgiven in the amount of \$3,516,054
28

1 (constituting the entire loan and any accrued interest).

2 29. Fitness Alliance, LLC was approved for a second loan of \$1,363,380. It reported
3 500 jobs. On July 9, 2021, the loan was forgiven in the amount of \$1,379,180.
4

5 30. "Fitness Alliance NV" was approved for a loan of \$1,874,290. It reported 500
6 jobs. On June 11, 2021, the loan was forgiven in the amount of \$1,894,573.
7

8 31. Upon information and belief, there is no business by the name of Fitness Alliance
9 NV, and this loan was actually made to Fitness Alliance, LLC.

10 32. EOS Fitness Opco Holdings, LLC was approved for a loan of \$623,085. It
11 reported 43 jobs. On June 11, 2021, the loan was forgiven in the amount of
12 \$629,828.
13

14 33. EOS Fitness Utah LLC was approved for a loan of \$535,510. It reported 280 jobs.
15 On June 11, 2021, the loan was forgiven in the amount of \$541,305.
16

17 34. Sports Arena Fitness, LLC was approved for a loan of \$211,212. It reported 95
18 jobs. On January 11, 2021, the loan was forgiven in the amount of \$212,631.
19

20 35. All of the loans described in Paragraphs 27 through 33 provided the same address
21 on the application: 1 E Washington St., Ste. 500, Phoenix, AZ 85004.

22 36. The loan amounts for the loans described in Paragraphs 27 through 33 totaled
23 \$8,085,888, and, including interest, the loan forgiveness totaled \$8,173,571.
24

25 *Multiple Applications for PPP Loans by Fitness Alliance, LLC*

26 37. Fitness Alliance, LLC violated the PPP rules by applying for more than one PPP
27 loan.
28

1 38. Lenders would not have funded or forgiven multiple loans for Fitness Alliance,
2 LLC had they been aware of this fact.

3
4 39. This is a material term of the PPP loan application, as evinced by the Department
5 of Justice seeking both False Claims Act and Financial Institutions Reform,
6 Recovery and Enforcement Act penalties against entities and individuals who applied
7 for and received multiple PPP loans.¹

8
9 40. Accordingly, \$6,716,081 was obtained by Fitness Alliance, LLC in violation of
10 the False Claims Act, and \$6,789,807 of loan forgiveness was obtained by Fitness
11 Alliance, LLC in violation of the False Claims Act.

12
13 *Ineligibility for PPP Loans*

14 41. In addition to small business concerns, a business only was eligible for a First
15 Draw PPP Loan if the business had 500 or fewer employees or the business met the
16 SBA employee-based or revenue-based size standard for the industry in which it
17 operates (if applicable).

18
19 42. Upon information and belief, the EOS Fitness Entities did not qualify for a PPP
20 loan under the employment test because they employed more than 500 employees (as
21 evinced by their own loan applications) and, upon information and belief, their
22 combined annual receipts exceeded the SBA limits.
23
24

25
26
27 ¹ See, e.g., Press Release, Department of Justice, New Jersey Pawn Shop and its
28 Owner Settle False Claims Act Allegations Relating to Paycheck Protection Program
Loan (April 21, 2022), <https://www.justice.gov/opa/pr/new-jersey-pawn-shop-and-its-owner-settle-false-claims-act-allegations-relating-paycheck>.

1 43. Under the SBA's Affiliation Rules for PPP loans, codified at 13 C.F.R.
2 § 121.301(f), the employees and revenues of Fitness Alliance, LLC; EOS Fitness
3 Utah LLC; Sports Arena Fitness, LLC; and EOS Fitness Opco Holdings, LLC (and
4 Fitness Alliance NV, insofar as it is a separate entity) should have been added
5 together when determining whether any of the EOS Fitness Entities individually
6 qualified for PPP loans.
7

8
9 44. When multiple entities are operated under common ownership or management
10 operate, the SBA generally applies "affiliation rules" that require the various entities
11 to consolidate their employee and revenue count when evaluating their loan
12 eligibility.
13

14 45. Each EOS Fitness location and entity qualified as an "affiliate" under the SBA's
15 Affiliation Rules, under either the "affiliation based on ownership" or "affiliation
16 based on management" tests.
17

18 46. The EOS Fitness Entities were owned by EOS Fitness Opco Holdings, LLC.

19 47. Common management is exemplified by EOS Fitness's handling of the Covid
20 closures and companywide reopening plan. EOS Fitness also offered memberships
21 that grant access to all of its facilities, nationwide.
22

23 48. The applicable standards in effect at the time dictated that the size standards for
24 NAICS code 713940 was \$8 million in annual receipts.
25

26 49. "Annual receipts" is defined as the "total income" (or "gross income") plus the
27 "cost of goods sold." Receipts are averaged over a business' latest three complete
28

1 fiscal years to determine the average annual receipts.

2 50. Upon information and belief, the EOS Fitness Entities combined to gross above
3 the \$8 million threshold.
4

5 51. Notably, in January 2019, EOS Fitness received a "\$120M one-loan debt
6 facility," which suggests the facilities were generating revenues of considerably more
7 than \$8 million per year.
8

9 52. Upon information and belief, when applying the Affiliation Rules, EOS Fitness
10 Utah LLC and Sports Arena Fitness, LLC did not qualify for PPP loans.

11 Accordingly, an additional \$535,510 and \$211,212 in PPP loans were fraudulently
12 obtained by these entities, respectively, in violation of the False Claims Act, and loan
13 forgiveness in the amounts of \$541,305 and \$212,631 was fraudulently obtained by
14 these entities, respectively, in violation of the False Claims Act.
15
16

17 53. Upon information and belief, Fitness Alliance, LLC did not qualify for a PPP
18 loan under these requirements even when not including the employees or gross
19 receipts of the other EOS Fitness Entities because it employed more than 500
20 employees and its own gross receipts exceeded the \$8 million threshold.
21

22 54. By submitting false applications for PPP loans with false certifications, EOS
23 Fitness caused the Government to pay processing fees to the lenders that it should
24 not have had to pay in violation of 31 U.S.C. § 3729(a)(1)(A).
25

26 55. The false certifications to the lender constitute violations of 31 U.S.C.
27 § 3729(a)(1)(B).
28

1 56. By submitting false information and applications for loan forgiveness, EOS
 2 Fitness caused the Government to pay loan forgiveness amounts to the lenders in
 3 violation of 31 U.S.C. § 3729(a)(1)(A) and knowingly and improperly avoided an
 4 obligation to pay or transmit money to the Government in violation of 31 U.S.C.
 5 § 3729(a)(1)(G).
 6

7 57. The submission of the loan applications by EOS Fitness and its entities to the
 8 same lender on the same day evinces a coordinated conspiracy to commit violations
 9 of the False Claims Act in violation of 31 U.S.C. § 3729(a)(1)(C).
 10

11 False Certifications
 12

13 58. The PPP Borrower Application Form in use on April 28, 2020, required the
 14 applicant to certify in good faith that, *inter alia*:

- 15 (1) The Applicant is eligible to receive a loan under the rules in effect at
 16 the time this application is submitted that have been issued by the
 17 Small Business Administration (SBA) implementing the Paycheck
 18 Protection Program under Division A, Title I of the Coronavirus Aid,
 19 Relief, and Economic Security Act (CARES Act) (the Paycheck
 Protection Program Rule).
- 20 (2) The Applicant (1) is an independent contractor, eligible self-employed
 21 individual, or sole proprietor or (2) employs no more than the greater
 22 of 500 or employees [sic] or, if applicable, the size standard in number
 23 of employees established by the SBA in 13 C.F.R. 121.201 for the
 Applicant's industry.
- 24 (3) During the period beginning on February 15, 2020 and ending on
 25 December 31, 2020, the Applicant has not and will not receive another
 26 loan under the Paycheck Protection Program.
- 27 (4) I further certify that the information provided in this application and
 28 the information provided in all supporting documents and forms is true
 and accurate in all material respects. I understand that knowingly

1 making a false statement to obtain a guaranteed loan from SBA is
 2 punishable under the law, including under 18 USC 1001 and 3571 by
 3 imprisonment of not more than five years and/or a fine of up to
 4 \$250,000; under 15 USC 645 by imprisonment of not more than two
 5 years and/or a fine of not more than \$5,000; and, if submitted to a
 6 federally insured institution, under 18 USC 1014 by imprisonment of
 7 not more than thirty years and/or a fine of not more than \$1,000,000.

8 59. Upon information and belief, some of the PPP certifications listed in Paragraph

9 58, above, were false when made by the various EOS Fitness Entities.

10 60. First, it was blatantly untrue that Fitness Alliance, LLC was not applying for
 11 more than a single PPP loan.

12 61. Moreover, that certification would have been false when made by EOS Fitness
 13 Utah LLC or Sports Arena Fitness, LLC under the Affiliation Rules.

14 62. Second, the applicants were not eligible to receive loans and did not meet the size
 15 standards.

16
 17 **COUNT I**
 18 **VIOLATIONS OF 31 U.S.C. § 3729—FEDERAL FCA**
 19 **(All Defendants)**

20 63. Relator hereby incorporates and realleges herein all other paragraphs as if fully
 21 set forth herein.

22 64. As set forth above, Defendants knowingly presented or caused to be presented
 23 false or fraudulent claims for payment or approval, in violation of 31 U.S.C. §
 24 3729(a)(1)(A).
 25

26 65. As set forth above, Defendants knowingly made, used, or caused to be made or
 27 used, false records or statements material to false or fraudulent claims, in violation of
 28

1 31 U.S.C. § 3729(a)(1)(B).

2 66. As set forth above, Defendants knowingly conspired to commit a violation of the
3 False Claims Act, in violation of 31 U.S.C. § 3729(a)(1)(C).

4 67. As set forth above, Defendants knowingly made, used, or caused to be made or
5 used a false record or statement material to an obligation to pay or transmit money or
6 property to the Government, or knowingly concealed or knowingly and improperly
7 avoided or decreased an obligation to pay or transmit money or property to the
8 Government, in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(G).

9 68. Due to Defendants' conduct, the United States Government has suffered
10 substantial monetary damages and is entitled to recover treble damages and a civil
11 penalty for each false claim. 31 U.S.C. § 3729.

12 69. Relator is entitled to reasonable attorneys' fees, costs, and expenses. 31 U.S.C. §
13 3730(d)(1).

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Relator prays for judgment against Defendants:

- 16 a) awarding the United States treble damages sustained by it for each of the false
17 claims or improperly retained payments;
18 b) awarding the United States a maximum civil penalty for each of the false
19 claims, records, or statements;
20 c) awarding Relator the maximum share of the proceeds of this action and any
21 alternate remedy or the settlement of any such claim;

1 d) awarding Relator litigation costs, expenses, and reasonable attorneys' fees;

2 and

3
4 e) granting such other relief as the Court may deem just and proper.

5 **DEMAND FOR JURY TRIAL**

6 Relator hereby respectfully demands trial by jury on all issues and counts triable
7
8 as of right before a jury.